

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

KONONOV VITALY,

Plaintiff,

v.

SACRAMENTO COUNTY SHERIFF  
DEPARTMENT, et al.,

Defendants.

No. 2:22-CV-1916-DMC-P

ORDER

and

FINDINGS AND RECOMMENDATIONS

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court is Plaintiff's second amended complaint. See ECF No. 12.

On June 14, 2024, the Court issued an order addressing the sufficiency of Plaintiff's second amended complaint. See ECF No. 15. The Court determined that Plaintiff states cognizable conditions-of-confinement claims under the Eighth Amendment against Defendants Leahy and Vice, as outlined in Claim I and Claim II of the second amended complaint. See id. at 4. The Court otherwise determined that the second amended complaint fails to state any other claims as against any other named defendant. See id. at 4-6. Plaintiff was provided an opportunity to file a third amended complaint as to the deficient claims and advised that, if no third amended complaint was filed within 30 days, the action would proceed as against

1 Defendants Leahy and Vice only and that all other claims and defendants would be dismissed.  
2 See id. at 6-7. More than 30 days have passed, and Plaintiff has not filed a third amended  
3 complaint. The Court will now recommend that this action proceed on the second amended  
4 complaint as to Plaintiff's Eighth Amendment claims against Defendants Leahy and Vice and that  
5 all other claims and defendants be dismissed with prejudice for failure to state a claim.

6 Based on the foregoing, the undersigned orders and recommends as follows:

7 1. It is ORDERED that the Clerk of the Court is directed to randomly assign a  
8 District Judge to this case.

9 2. It is ORDERED that the Clerk of the Court is directed to update the docket  
10 to add Leahy and Vice as defendants to this action.

11 3. It is RECOMMENDED that this action proceed on Plaintiff's second  
12 amended complaint as to his Eighth Amendment conditions-of-confinement claims against  
13 Defendants Leahy and Vice only.

14 4. It is RECOMMENDED that all other claims and defendants be dismissed  
15 with prejudice for failure to state a claim.

16 These findings and recommendations are submitted to the United States District  
17 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days  
18 after being served with these findings and recommendations, any party may file written objections  
19 with the Court. Responses to objections shall be filed within 14 days after service of objections.  
20 Failure to file objections within the specified time may waive the right to appeal. See Martinez v.  
21 Ylst, 951 F.2d 1153 (9th Cir. 1991).

22  
23 Dated: July 31, 2024



24 DENNIS M. COTA  
25 UNITED STATES MAGISTRATE JUDGE  
26  
27  
28